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IN THE

Supreme Court of the United States

October Term, 1962

No. 30

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS,

Appellants,

v.

CITY OF FAIRFIELD, a Municipal Corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

MOTION TO DISMISS OR AFFIRM

FRANK B. PARSONS
4709 Gary Avenue
Fairfield, Alabama

IN THE

Supreme Court of the United States

October Term, 1962

No. 566

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS,

Appellants,

vs.

CITY OF FAIRFIELD, a Municipal Corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

MOTION TO DISMISS OR AFFIRM

The City of Fairfield, Alabama, a Municipal Corporation, appellee herein, by its counsel, and, under Supreme Court Rule 16, moves this Honorable Court to dismiss with costs the appeal taken to this Court by Appellants, or, in the alternative, to affirm the judgment below, for the following reasons:

1. There is no jurisdiction, under the provisions of Title 28, U. S. Code, Section 1257 (2), for this appeal.

2. There is no substantial federal question presented in this action.

The foregoing reasons are more fully set forth in the statement opposing jurisdiction included herewith.

STATEMENT OPPOSING JURISDICTION

Appellee, believing that there is no jurisdiction, under the United States Code, Section 1257 (2) for this appeal, and that there is no substantial question involved here, files this statement opposing jurisdiction on appeal and in support of its motion included herewith.

STATEMENT OF THE CASE

Around noon of Wednesday, October 11, 1961, Appellant, Fields was served with an injunction (R. 24) issued from the Circuit Court of Jefferson County, Alabama, Bessemer Division, In Equity forbidding him, the National States Rights Party, their servants, agents and employees, from holding a certain meeting scheduled for 8 P. M. that evening and from distributing certain described handbills. Thereafter on that evening about 7:30 P. M. and just prior to the announced meeting time of 8:00 P. M., the Appellants, Fields and Lyons, of the Appellant, National States Rights Party, arrived at the meeting place and spoke to various of the peoples assembled there (R. 16, 22, 25, 27, 49, 54, 60, 62, 63) and passed out copies of the Party's newspaper, Thunderbolt, thereby for all intents and purposes having their announced meeting as though the injunction had never been issued, in complete and contemptuous disregard of the Court and its injunction. They were brought before the Circuit Court of Jefferson County, Alabama, Bessemer Division, In Equity, on the contempt charge and found guilty of the contempt. (R 72.) On certiorari to the Supreme Court of Alabama, reported at 143 So. 2nd 177, the finding of the Circuit

Court in Equity was affirmed. In doing so, the Supreme Court of Alabama said, "Here, the circuit court had jurisdiction of the parties and the subject matter. It had the authority to make the decree or order, and on its face, the order disobeyed was not void." — — "In the face of this, petitioners, without moving to dissolve the temporary injunction, seeking a hearing, or in any way contesting the writ, proceeded to meet a crowd gathered across the street from the advertised place of meeting and distributed inflammatory literature.

DISCUSSION

This case is markedly similar to the case of Howat vs. Kansas, 258 U.S. 181, 66 L. Ed. 550, 42 S. Ct. 272, in which the Court said "An Injunction duly issuing out of a Court of general jurisdiction with equity powers, upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the Court may be, even if the error be in the assumption of the validity of a seeming but void law, going to the merits of the case. It is for the Court of the first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher Court, its orders based on its decisions are to be respected, and disobedience of them is contempt of its lawful authority, to be punished." This proposition was followed in United States vs. United Mine Workers of America, 330 U.S. 258, 91 L. Ed. 884, 67 S. Ct. 677 and by the Alabama Supreme Court in this case, 143 So. 2nd 177. This Court said further in the United States v. United Mine Workers of America case, supra, "In the case before us, the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt." and further, "The interest

of orderly government demands that respect and compliance be given to orders issued by Courts possessed of jurisdiction of person and subject matter. One who defies the public authority and wilfully refuses his obedience, does so at his peril."

It is apparent from the foregoing that the Alabama Supreme Court decided this case on the basis of general law rather than on any consideration of the application of the Federal Constitution. The case of Howat vs. Kansas, supra, is also authority for the following proposition: "Where the record shows that the case was decided and disposed of by the State Court without any consideration of the application of the Federal Constitution to the features of the State Statute of which complaint is made, even if the complained of features are void, if the State Court sustained the contempt proceedings on general law, the Supreme Court cannot consider the Federal question mooted and assigned for error. This proposition was stated a little differently in Cramp vs. Board of Public Instruction of Orange County, Florida, 82 S. Ct. 275, 368 U.S. 278, 7 L. Ed. 2nd 285, "If the State Court judgment rests upon two grounds, one of which is Federal and the other non-Federal in character, the United States Supreme Court does not have jurisdiction of the appeal if the non-Federal ground is independent of the Federal ground and adequate to support the judgment."

CONCLUSION

Appellee respectfully submits that there is a want of jurisdiction herein for an appeal under Title 28, U.S. Code, Section 1257 (2), and respectfully urges that his motion filed herewith be granted.

Respectfully submitted,

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Attorney for Appellee